

INTERLOCAL AGREEMENT BETWEEN THE CITY OF NORTH BEND AND THE CITY OF ISSAQUAH FOR PROSECUTION SERVICES

A. The City of North Bend (hereafter "North Bend") is a municipal corporation organized under the laws of the State of Washington.

B. The City of Issaquah (hereafter "Issaquah") is a municipal corporation organized under the laws of the State of Washington.

C. North Bend desires to have prosecution services performed by Issaquah as set forth in the Agreement below.

D. The Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes municipal corporations to contract with one another to perform any act that each is independently authorized to perform.

E. The parties enter this Agreement in consideration of the mutual covenants and promises set forth in this Agreement, the mutual benefits to be derived by each, and in the exercise of authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW.

AGREEMENT

1. Purpose of Agreement. The purpose of this Agreement is to contract for the provision of certain prosecutor services by Issaquah to North Bend, through the use of a contracted prosecutor, to the maximum extent permitted by law, for the prosecution of North Bend's civil, traffic, or other infractions, and criminal citations; to set forth fees to be paid by North Bend for such services; and to specify the responsibilities of Issaquah and North Bend respectively for such prosecutor services.

2. Prosecution Services Provided By Issaquah. The prosecutor contracted by Issaquah to perform prosecution services for North Bend will communicate with North Bend's police department, both orally and in writing, and make filing decisions on select cases; interview witnesses and victims of crimes, advise victims regarding their rights and responsibilities; review and remain familiar with filed criminal misdemeanor and gross misdemeanor cases; maintain all current cases in an appropriate filing system; process subpoenas and defense counsel discovery requests; represent North Bend at arraignments; make sentencing decisions and recommendations to the Issaquah Municipal Court; represent North Bend at all pretrial hearings; prepare legal memorandums in specific cases and argue the memorandums to the court; represent North Bend in all criminal misdemeanor and gross misdemeanor bench trials; prepare jury instructions and represent North Bend in jury trials; and represent North Bend in selected contested infraction matters.

3. Compensation and Other Costs. North Bend shall compensate Issaquah for providing all services as specified in Paragraph 2 of this Agreement by payment on a monthly basis. North Bend shall pay Issaquah a fee of one thousand dollars (\$1,000.00) each month. In the event that this Agreement takes effect on a day other than the first of a month, North Bend will pay Issaquah on a pro-rated basis for the first month. This fee shall be the sole compensation due Issaquah for all services provided. These fees shall be paid regardless of whether the cases are later dismissed without a full adjudication. North Bend shall additionally pay Issaquah all other costs as specified as the responsibility of North Bend in Section 3.1 hereof.

3.1 Additional Costs. North Bend shall pay Issaquah the following rates for the respective services:

3.1.1 Forfeiture Work. North Bend shall pay Issaquah one hundred dollars (\$100.00) per hour for forfeiture work.

3.1.2 Jury Trials. North Bend shall pay Issaquah five hundred dollars (\$500.00) per jury trial.

3.1.3 Appeals. North Bend shall pay Issaquah five hundred dollars (\$500.00) per appeal.

3.1.4 Code Compliance Work. North Bend shall pay Issaquah one hundred dollars (\$100.00) per hour for code compliance work.

4. Payment of Compensation. Issaquah shall bill North Bend monthly for amounts due under this Agreement. North Bend shall pay the amount due within 45 days of receipt. However, if North Bend has a good faith dispute with the amount of the invoice, North Bend shall pay the non-disputed amount within the time frame set forth in this section.

5. Adjustment of Filing Fees. Filing fees payable hereunder shall be subject to adjustment as follows:

5.1 Adjustment for Additional Duties. In the event that Issaquah's duties under this Agreement are enlarged or increased due to local, state, or federal mandates, or new requirements from North Bend, Issaquah may increase the filing fees or add a supplemental monthly fee to North Bend to cover the costs to North Bend for the change. Issaquah shall notify North Bend of the effective date of the fee changes, which may be immediately. Either party may request mediation as to the amount of this fee change. North Bend shall timely pay the new fees from their effective date even if mediation is requested.

5.2 Annual Adjustment. In 2014, the parties shall meet on or before June 30 to review the cost of the services provided by Issaquah and the fees to be paid by North Bend to fairly compensate Issaquah for such services. The parties shall use best efforts to determine whether an adjustment of fees is warranted, and if so, the amount thereof. Fee adjustments agreed to pursuant to this process shall not require an amendment of this Agreement, but shall be confirmed in writing. If Issaquah does not propose a fee adjustment prior to September 30th, no increase for the next year shall be permitted. If Issaquah does propose a fee adjustment, North Bend may request formal negotiations by notifying Issaquah within 15 days after receipt of the proposed fee adjustment. If negotiation does not resolve the issue by November 15th, North Bend may terminate this agreement. The existing fees shall remain in effect through December 31st of that year, at which date this Agreement will be deemed terminated.

6. Factors Considered. In entering into this Agreement for prosecutor services, North Bend and Issaquah have considered, pursuant to RCW 39.34.180, the anticipated costs of services, anticipated and potential revenues to fund the services, and fee recoupment.

7. North Bend Ordinances, Rules, and Regulations. In executing this Agreement, Issaquah does not assume liability or responsibility for or in any way release North Bend from any liability or responsibility which arises in whole or in part from the existence or effect of North Bend ordinances, rules, or regulations, policies or procedures. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any North Bend ordinance, rule, or regulation is at issue, North Bend shall defend the same at its sole expense and if judgment is entered or damages are awarded against North Bend, Issaquah, or both, North Bend shall satisfy the same, including all chargeable costs and attorneys' fees.

8. Indemnity. The parties shall each indemnify the other as follows:

8.1 Issaquah Indemnity. Issaquah shall protect, indemnify, and save harmless North Bend, its officers, elected officials, agents, volunteers, and employees from any and all costs, claims, judgments, or awards of damages (including costs and all attorney fees), arising out of or in any way resulting from the negligent acts, errors, or omissions of Issaquah, its officers, employees, and agents in performing this Agreement.

8.2 North Bend Indemnity. North Bend shall protect, defend, indemnify, and save harmless Issaquah, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts, errors, or omissions of North Bend, its officers, employees, or agents in performing this Agreement.

8.3 Survival of Indemnitees. The provisions of this Paragraph shall survive the expiration or termination of this Agreement. No obligation shall exist to

indemnify for injuries caused by or resulting from events occurring after the last day of prosecution services under this Agreement.

9. Actions Contesting Agreement. Each party shall appear and defend any action or legal proceeding brought to determine or contest: (i) the validity of this Agreement and/or (ii) the legal authority of North Bend and/or Issaquah to undertake the activities contemplated by this Agreement. If both parties to this Agreement are not named as parties to the action, the party named shall give the other party prompt notice of the action and such party shall move to intervene. Each party shall bear any costs and expenses taxed by the court against it separately, provided any costs and expenses assessed by a court against both parties jointly shall be shared equally.

10. Financing. There shall be no financing of any joint or cooperative undertaking pursuant to this Agreement. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Agreement.

11. Property. This Agreement does not provide for the acquisition, holding, or disposal of real or personal property.

12. Joint Administrative Board. No separate legal or administrative entity is created by this Agreement. To the extent necessary, this Agreement shall be administered by the City Administrator for North Bend or his/her designee, and the City Administrator or his/her designee as a Joint Administrative Board.

13. Dispute Resolution. It is the parties' intent to resolve any disputes relating to the interpretation or application of this Agreement informally through discussions at staff level. In the event disputes cannot be resolved informally at the staff level, resolution shall be sought by the City Administrators of each city and if unsuccessful, then the parties agree to submit the dispute to non-binding mediation/dispute resolution. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through binding arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

14. Independent Contractor. Each party to this Agreement is an independent contractor with respect to the subject matter herein. Nothing in this Agreement shall make any employee of North Bend an Issaquah employee for any purpose, including,

but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded Issaquah employees by virtue of their employment. Nothing in this Agreement shall make any employee of Issaquah a North Bend employee for any purpose, including but not limited to for withholding taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded North Bend employees by virtue of their employment. At all times pertinent hereto, employees of Issaquah are acting as Issaquah employees and employees of North Bend are acting as North Bend employees.

15. Notices. Any notice or other communication given hereunder shall be deemed sufficient, if in writing and delivered personally to the addressee, or sent by certified or registered mail, return receipt requested, addressed as follows, or to such other address as may be designated by the addressee by written notice to the other party:

Issaquah:

Charlie Bush, Deputy City Administrator
City of Issaquah
130 E. Sunset Way
P.O. Box 1307
Issaquah, WA 98027

North Bend:

Londi Lindell, City Administrator
City of North Bend
211 Main Avenue
P.O. Box 896
North Bend, WA 98045

16. Partial Invalidity. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect.

17. Assignability. The rights, duties, and obligations of either party to this Agreement shall not be assignable.

18. Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement. No amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

19. Duration. The term of this Agreement shall commence upon execution by both parties effective as of June 1, 2013, and shall expire on May 31, 2015, unless terminated earlier pursuant to Paragraph 20.

20. Termination of Agreement. Either party may give notice of termination for cause based on the breach of any material provision of this Agreement by the other party, provided the Agreement shall remain in full force and effect until the conclusion of Dispute Resolution pursuant to Paragraph 13. Either party may give notice of termination for convenience upon 60 (sixty) days notice to the other party, without having to engage in dispute resolution. In the event of early termination of this Agreement, the parties will work cooperatively to ensure the orderly transition of cases from the contracted prosecutor to the new prosecutor.

21. Recording. Consistent with RCW 39.34.040, this Agreement shall be filed for recording with the King County Department of Records upon full execution or posted on Issaquah's and North Bend's respective websites listed by subject matter.

22. Insurance. Each party will be responsible for maintaining its own insurance.

23. General Provisions. This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by written agreement signed by the parties. Any provision of this Agreement which is declared invalid or illegal shall in no way effect or invalidate any other provision. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

DONE this ____ day of _____, 2013.

CITY OF ISSAQUAH

CITY OF NORTH BEND

Ava Frisinger
Mayor
City of Issaquah

Kenneth Hearing
Mayor
City of North Bend

ATTEST/AUTHENTICATED:

By:_____
City Clerk

APPROVED AS TO FORM:

By:_____
City Attorney